



House of Representatives

File No. 274

General Assembly

February Session, 2004

(Reprint of File No. 37)

House Bill No. 5198
As Amended by House
Amendment Schedule "A"

Approved by the Legislative Commissioner
March 25, 2004

AN ACT CONCERNING THE OFFICE OF PROTECTION AND ADVOCACY FOR PERSONS WITH DISABILITIES.

Be it enacted by the Senate and House of Representatives in General
Assembly convened:

1 Section 1. Section 46a-11a of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2004*):

3 For the purposes of sections 46a-11a to 46a-11g, inclusive, as
4 amended by this act:

5 [(a)] (1) "Abuse" means the wilful infliction of physical pain or
6 injury or the wilful deprivation by a caretaker of services which are
7 necessary to the person's health or safety;

8 [(b)] (2) "Neglect" means a situation where a person with mental
9 retardation either is living alone and is not able to provide for himself
10 the services which are necessary to maintain his physical and mental
11 health or is not receiving such necessary services from the caretaker;

12 [(c)] (3) "Caretaker" means a person who has the responsibility for
13 the care of a person with mental retardation as a result of a family

14 relationship or who has assumed the responsibility for the care of the
15 person with mental retardation voluntarily, by contract or by order of
16 a court of competent jurisdiction. Neither a guardian nor a conservator
17 need be a caretaker;

18 [(d)] (4) "Conservator" means a conservator of the person or of the
19 estate appointed pursuant to section 45a-644 to 45a-662, inclusive;

20 [(e)] (5) "Director" means the director of the Office of Protection and
21 Advocacy for Persons with Disabilities;

22 [(f)] (6) "Facility" means any public or private hospital, nursing
23 home facility, training school, regional facility, group home,
24 community training home, school or other program serving persons
25 with mental retardation;

26 [(g)] (7) "Guardian" means the guardian or limited guardian of a
27 person with mental retardation appointed pursuant to sections 45a-668
28 to 45a-684, inclusive, as amended;

29 [(h)] (8) "Person with mental retardation" means a person who: (A)
30 has mental retardation, as defined in section 1-1g, [who] (B) is at least
31 the age of eighteen and under the age of sixty, except for purposes of
32 subsection (b) of section 46a-11c, as amended by this act, is eighteen
33 years of age or older, and [who] (C) is substantially unable to protect
34 himself from abuse and includes all such persons living in residential
35 facilities under the jurisdiction of the Department of Mental
36 Retardation;

37 [(i)] (9) "Protective services" means services provided by the state or
38 any other governmental or private organization or individual which
39 are necessary to prevent abuse or neglect. Such services may include
40 the provision of medical care for physical and mental health needs; the
41 provision of support services in the facility, including the time limited
42 placement of department staff in such facility; the relocation of a
43 person with mental retardation to a facility able to offer such care
44 pursuant to section 17a-210, as amended, 17a-274, as amended, or 17a-

45 277, as applicable; assistance in personal hygiene; food; clothing;
46 adequately heated and ventilated shelter; protection from health and
47 safety hazards; protection from maltreatment, the result of which
48 includes, but is not limited to, malnutrition, deprivation of necessities
49 or physical punishment; and transportation necessary to secure any of
50 the above-stated services, except that this term shall not include taking
51 such person into custody without consent; and

52 [(j)] (10) "Commissioner" means the Commissioner of Mental
53 Retardation.

54 Sec. 2. Subsection (a) of section 46a-11b of the general statutes is
55 repealed and the following is substituted in lieu thereof (*Effective*
56 *October 1, 2004*):

57 (a) Any physician or surgeon licensed under the provisions of
58 chapter 370, any resident physician or intern in any hospital in this
59 state, whether or not so licensed, any registered nurse, any person paid
60 for caring for persons in any facility and any licensed practical nurse,
61 medical examiner, dental hygienist, dentist, occupational therapist,
62 optometrist, chiropractor, psychologist, podiatrist, social worker,
63 school teacher, school principal, school guidance counselor, school
64 paraprofessional, mental health professional, physician assistant,
65 licensed or certified substance abuse counselor, licensed marital and
66 family therapist, speech pathologist, clergyman, police officer,
67 pharmacist, physical therapist, licensed professional counselor or
68 sexual assault counselor or battered women's counselor as defined in
69 section 52-146k who has reasonable cause to suspect or believe that
70 any person with mental retardation has been abused or neglected
71 shall, [within five calendar days] as soon as practicable but not later
72 than seventy-two hours after such person has reasonable cause to
73 suspect or believe that a person with mental retardation has been
74 abused or neglected, report such information or cause a report to be
75 made in any reasonable manner to the director or persons the director
76 designates to receive such reports. Such initial report shall be followed
77 up by a written report [within five additional] not later than five

78 calendar days after the initial report was made. Any person required to
79 report under this subsection who fails to make such report shall be
80 fined not more than five hundred dollars.

81 Sec. 3. Section 46a-11c of the general statutes, as amended by section
82 3 of public act 03-146, is repealed and the following is substituted in
83 lieu thereof (*Effective October 1, 2004*):

84 (a) The director, upon receiving a report that a person with mental
85 retardation allegedly is being or has been abused or neglected, shall
86 make an initial determination whether such person has mental
87 retardation, shall determine if the report warrants investigation and
88 shall cause, in cases that so warrant, a prompt, thorough evaluation to
89 be made to determine whether the person has mental retardation and
90 has been abused or neglected. [In cases where there is a death of a
91 person with mental retardation for whom the Department of Mental
92 Retardation has direct or oversight responsibility for medical care, and
93 there are allegations that such death may be due to abuse or neglect,
94 the director shall conduct an investigation to determine whether abuse
95 or neglect occurred, except as may be otherwise required by court
96 order. The director, in consultation with the Commissioner of Mental
97 Retardation, shall establish protocols for conducting such
98 investigations.] For the purposes of sections 46a-11a to 46a-11g,
99 inclusive, as amended by this act, the determination of mental
100 retardation may be made by means of a review of records and shall not
101 require the director to conduct a full psychological examination of the
102 person. Any delay in making such determination of mental retardation
103 shall not delay the investigation of abuse or neglect or
104 recommendation of provision of protective services. The evaluation
105 shall include a visit to the named person with mental retardation and
106 consultation with those individuals having knowledge of the facts of
107 the particular case. All state, local and private agencies shall have a
108 duty to cooperate with any investigation conducted by the Office of
109 Protection and Advocacy for Persons with Disabilities under this
110 section, including the release of complete client records for review,
111 inspection and copying, except where the person with mental

112 retardation refuses to permit his or her record to be released. The
113 director shall have subpoena powers to compel any information
114 related to such investigation. All client records shall be kept
115 confidential by said office. Upon completion of the evaluation of each
116 case, written findings shall be prepared which shall include a
117 determination of whether abuse or neglect has occurred and
118 recommendations as to whether protective services are needed. The
119 director, except in cases where the parent or guardian is the alleged
120 perpetrator of abuse or is residing with the alleged perpetrator, shall
121 notify the parents or guardian, if any, of the person with mental
122 retardation if a report of abuse or neglect is made which the director
123 determines warrants investigation. The director shall provide the
124 parents or guardians who the director determines are entitled to such
125 information with further information upon request. The person filing
126 the report of abuse or neglect shall be notified of the findings upon
127 request.

128 (b) In cases where there is a death of a person with mental
129 retardation for whom the Department of Mental Retardation has direct
130 or oversight responsibility for medical care, and there is reasonable
131 cause to suspect or believe that such death may be due to abuse or
132 neglect, the Commissioner of Mental Retardation shall notify the
133 director or the director's designee not later than twenty-four hours
134 after the commissioner determines that there is reasonable cause to
135 suspect or believe that such death may be due to abuse or neglect and
136 the director shall conduct an investigation to determine whether abuse
137 or neglect occurred, except as may be otherwise required by court
138 order. The director, in consultation with the Commissioner of Mental
139 Retardation, shall establish protocols for conducting such
140 investigations.

141 ~~[(b)]~~ (c) The director shall maintain a state-wide registry of the
142 reports received, the evaluation and findings and actions
143 recommended.

144 ~~[(c)]~~ (d) Neither the original report nor the evaluation report of the

145 investigator which includes findings and recommendations shall be
146 deemed a public record for purposes of section 1-210, as amended. The
147 name of the person making the original report shall not be disclosed to
148 any person unless the person making the original report consents to
149 such disclosure or unless a judicial proceeding results therefrom.

150 Sec. 4. Subsection (c) of section 46a-11e of the general statutes is
151 repealed and the following is substituted in lieu thereof (*Effective*
152 *October 1, 2004*):

153 (c) If the director commences an investigation and finds that the
154 person with mental retardation is seriously in need of immediate
155 protective services, he shall report the facts of the case to the
156 commissioner and the commissioner shall not delay the
157 commencement of protective services pending the full evaluation
158 report. If the commissioner's proposed action involves the removal
159 from his home of a person with mental retardation under
160 guardianship or of a person with mental retardation who is competent
161 and does not voluntarily consent to his removal, the commissioner
162 shall follow the procedures mandated in [subsection (k) of section 19a-
163 448] section 17a-274, as amended. [, including the filing of an
164 application in the Court of Probate pursuant to subsection (b) of
165 section 46a-11a.]

This act shall take effect as follows:	
Section 1	<i>October 1, 2004</i>
Sec. 2	<i>October 1, 2004</i>
Sec. 3	<i>October 1, 2004</i>
Sec. 4	<i>October 1, 2004</i>

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

OFA Fiscal Note**State Impact:**

Agency Affected	Impact
Department of Mental Retardation	None
Office of Protection & Advocacy	None

Municipal Impact: None

Explanation

The bill makes changes to the reporting of suspected abuse, neglect or death of a person with mental retardation that both the Department of Mental Retardation (DMR) and the Office of Protection and Advocacy for Persons with Disabilities (P&A) are involved in and will result in no additional cost to the state.

In FY 03 there were 12 deaths (of persons with mental retardation where DMR has direct or oversight responsibility) reported to P&A where abuse or neglect were suspected. During the first six months of FY 04 there have been 8 such deaths reported. The change to P&A's coverage of clients age 60 or older is not anticipated to result in a change to their caseload as its consistent with current practice.

It is anticipated that DMR will be able to meet within their existing resources, the 24-hour reporting requirement where there is reasonable cause to suspect that the death may have been due to abuse or neglect.

In addition, the bill reduces the mandatory reporting of reasonable cause to suspect that a person with mental retardation has been abused or neglected from five to three days, and is not anticipated to result in a fiscal impact. Currently, more than half of the reports of abuse/neglect are reported to P&A within three days. Full compliance

with the bill's requirement is anticipated to be achieved within DMR's current administrative protocol.

Although the bill does not change P&A's requirements (as the receiver of the reporting) from current practice, to the extent that P&A would maintain the responsiveness within their Abuse/Neglect Investigation Unit, on-call duties may be enhanced. P&A currently utilizes federal funding to support their adult protection services.

House "A" clarifies the twenty-four hour reporting provision and makes other technical changes that will result in no fiscal impact.

OLR Bill Analysis

HB 5198 (as amended by House "A")*

***AN ACT CONCERNING THE OFFICE OF PROTECTION AND
ADVOCACY FOR PERSONS WITH DISABILITIES*****SUMMARY:**

This bill changes how the Office of Protection and Advocacy (OPA) investigates deaths of Department of Mental Retardation (DMR) clients to which abuse or neglect is alleged to have contributed. Under current law, the OPA director must generally investigate when he receives a report of abuse or neglect of anyone with mental retardation who is between the ages of 18 and 59. When he receives a report that such abuse or neglect may have caused the death of such a person and DMR had direct oversight responsibility for the person's medical care, he must investigate to determine whether abuse or neglect occurred, unless a court order requires otherwise.

The bill expands these requirements to cover clients age 60 and older, and requires the DMR commissioner to notify the OPA director, or his designee, within 24 hours after he determines that there is reasonable cause to suspect or believe that abuse or neglect caused the death. The Department of Social Services' (DSS) Elderly Protective Services unit is charged with investigating alleged abuse and neglect of citizens aged 60 and over. It is not clear whether that department would continue to investigate in these circumstances. The Department of Children and Families investigates suspected abuse and neglect of children.

The bill also shortens, from five days to 72 hours, the time within which mandated reporters of any suspected cases of abuse or neglect of persons with mental retardation must report to OPA. And it adds licensed professional counselors to the list of reporters.

Finally, the bill makes technical changes.

*House Amendment "A" (1) changes when DMR must notify the OPA director; (2) requires an investigation of certain DMR client deaths if there is "reasonable cause to suspect or believe" that the death was due

to abuse or neglect, rather than when abuse or neglect is alleged; (3) adds professional counselors to the list of mandated reporters; and (4) removes an erroneous reference to a probate law.

EFFECTIVE DATE: October 1, 2004

**TIME FRAME FOR REPORTING SUSPECTED ABUSE OR
NEGLECT OF INDIVIDUALS WITH MENTAL RETARDATION**

The bill requires certain individuals (e.g., doctors, clergy) to report to OPA as soon as practicable, but no later than 72 hours after they have reasonable cause to suspect or believe that a person with mental retardation between the ages of 18 and 59 has been abused or neglected. Under current law, these individuals must report to OPA within five days of their first reasonable suspicion.

COMMITTEE ACTION

Human Services Committee

Joint Favorable Change of Reference

Yea 17 Nay 0

Public Health Committee

Joint Favorable Report

Yea 22 Nay 0